Supreme Court, U.S.
FILED
JUL 10 1992
OFFICE OF THE CLERK

(3)

No. 91-1986

In The
Supreme Court of the United States
October Term, 1991

TRUMP TAJ MAHAL ASSOCIATES, et al.,
Petitioners,

v.

COSTRUZIONI AERONAUTICHE GIOVANNI AGUSTA S.p.A., et al.,
Respondents.

BRIEF OF RESPONDENT PARAMOUNT AVIATION CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

---

*Ralph G. Wellington
James D. Crawford
Ivonia K. Slade
SCHNADER, HARRISON, SEGAL & LEWIS
1600 Market Street
Suite 3600
Philadelphia, Pennsylvania 19103
(215) 751-2000

Counsel for Respondent Paramount Aviation Corporation

**Counsel of Record*

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

REASONS FOR DENYING THE PETITION 2

I. THE COURT OF APPEALS DECISION CONCERNING AGUSTA SpA'S STATUS AS AN AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE IS CORRECT AND DOES NOT CONFLICT WITH DECISIONS OF ANY CIRCUIT COURT 2

II. THIS CASE IS AN INAPPROPRIATE VEHICLE FOR CONSIDERATION OF PETITIONER'S STATE LAW WRONGFUL DEATH CLAIMS WHERE BOTH THE DISTRICT COURT AND THE COURT OF APPEALS FOUND NO VALID CAUSE OF ACTION 4

CONCLUSION 6

TABLE OF AUTHORITIES

Cases: *Page*

Interstate Telephone & Telegraph Co. v. Public Service Electric Co., 86 N.J.L. 26, 90 A. 1062 (Err. & App. 1914) 5

O'Connell Machinery Co. v. M.V. "Americana", 734 F.2d 115 (2d Cir.), cert. denied, 469 U.S. 1086 (1984) 3

United States Casualty Co. v. Hercules Powder Co., 4 N.J. 157, 72 A.2d 190 (1950) 5

Statutes:

28 U.S.C. § 1603(b) 2, 3

N.J.S.A. 2A:31-4 4

NO. 91-1986

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1991

TRUMP TAJ MAHAL ASSOCIATES, et al.,

Petitioners,

v.

CONSTRUZIONI AERONAUTICHE GIOVANNI AGUSTA S.p.A. et al.,

Respondents.

BRIEF IN OPPOSITION OF RESPONDENT PARAMOUNT AVIATION CORPORATION

Respondent Paramount Aviation Corporation ("Paramount") respectfully submits that this Court should deny the petition for a writ of certiorari because it presents no issue deserving the Court's attention under Supreme Court Rule 10. The petition seeks review of the unpublished opinion issued in this

case by the United States Court of Appeals for the Third Circuit. The Third Circuit's decision is noted at 958 F.2d 365 (3d Cir. 1992).

REASONS FOR DENYING THE PETITION

I. THE COURT OF APPEALS DECISION CONCERNING AGUSTA SpA'S STATUS AS AN AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE IS CORRECT AND DOES NOT CONFLICT WITH DECISIONS OF ANY CIRCUIT COURT

Petitioners urge this Court to grant their petition for a writ of certiorari to address "a question of first impression before the Court concerning the parameters of section 1603(b) of the Foreign Sovereign Immunities Act, which defines an agency or instrumentality of a foreign state subject to the protections of that statute to include 'an organ of a foreign state or a political subdivision thereof, or [an entity where] a majority of shares or other ownership interest is owned by a foreign state or political subdivision thereof.' 28 U.S.C. § 1603(b)(2)." (Petition at 6) Petitioners have argued at each stage of these

proceedings that the mere indirect ownership of the Agusta respondents by the Italian government will not allow the respondents to be treated as agencies or instrumentalities of a foreign state for purposes of the Foreign Sovereign Immunities Act.

Petitioners characterize this issue as one of "paramount importance." The striking dearth of circuit court opinions on this issue, however, underscores the lack of any pressing question worthy of this Court's attention. Petitioners even acknowledge in their petition that "[f]ederal court decisions interpreting § 1603(b)(2) are few and far between," (Petition at p. 9) and cite only one other court of appeals decision on this issue. See *O'Connell Machinery Co. v. M.V. "Americana"*, 734 F.2d 115 (2d Cir.), cert. denied, 469 U.S. 1086 (1984).

Moreover, the Second Circuit's interpretation of § 1603(b)(2) in *O'Connell* is in accord with the Third Circuit's interpretation of that provision in this case. There is no need for this Court's review of the Third Circuit's decision below, then, because there is no conflict among the few circuits interpreting

§ 1603(b)(2) to include entities indirectly owned by a foreign state. The petition should therefore be denied.[1]

II. THIS CASE IS AN INAPPROPRIATE VEHICLE FOR CONSIDERATION OF PETITIONER'S STATE LAW WRONGFUL DEATH CLAIMS WHERE BOTH THE DISTRICT COURT AND THE COURT OF APPEALS FOUND NO VALID CAUSE OF ACTION

Petitioners attempt to paint the court of appeals' affirmance of the district court's dismissal of their state law wrongful death claims as reversible error worthy of review by this Court. The court of appeals, however, properly agreed with the district court in recognizing petitioners' claim as one for wrongful death and holding that the New Jersey wrongful death statute, N.J.S.A. 2A:31-4 (1991), will not recognize such a claim by an employer. (App. at

---

1. Petitioners refer briefly in their statement of the case to their contention below that removal of this case was improper because there is no diversity between Paramount and petitioners. (Petition at 4-5). Petitioners do not argue this point in their petition as a reason for granting the writ, however.

5a; 47a) As respondents argued in the district and circuit courts below, and as those courts agreed, petitioners' claim for damages resulting from the loss of their employees is no more than a garden-variety wrongful death claim which petitioners are not permitted to bring under the New Jersey statute. The district court correctly held:

> although plaintiffs did suffer purely economic damages, they are barred from recovery for those damages because inescapably those damages are rooted in the death of their employees and only statutory beneficiaries may recover for wrongful death. (App. at 48a).

Likewise, both the district court and the court of appeals found *Interstate Telephone & Telegraph Co. v. Public Service Electric Co.*, 86 N.J.L. 26, 90 A. 1062 (Err. & App. 1914), and *United States Casualty Co. v. Hercules Powder Co.*, 4 N.J. 157, 72 A.2d 190 (1950), relied upon by petitioners, easily distinguishable. (App. at 4a-5a; 39a-42a)

Even if the decisions below were worthy of this Court's attention, which they are not, see Supreme

Court Rule 10, both courts were entirely correct in their holding on the state law issue before them, without regard to the subsidiary questions raised in the petition. This Court therefore need not reach those points, and the petition should be denied.

CONCLUSION

For the foregoing reasons, respondent Paramount Aviation Corporation respectfully requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

*Ralph G. Wellington
James D. Crawford
Ivonia K. Slade
SCHNADER, HARRISON,
SEGAL & LEWIS
Suite 3600
1600 Market Street
Philadelphia, PA 19103
(215) 751-2000

Attorneys for Respondent
Paramount Aviation Corporation

**Counsel of Record*